

1 District Judge Richard A. Jones
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 BASSAM YUSEF KHOURY, et al.,) No. C13-1367-RAJ
10)
11 v.) Plaintiffs-Petitioners,)
12)
13 NATHALIE ASHER, et al.,)) **ORDER ADOPTING PARTIES'**
14) Defendants-Respondents.) **STIPULATION AND DIRECTING**
15) **ENTRY OF JUDGMENT**
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In the wake of the court's March 11 order, the parties have submitted a stipulation. Dkt. # 45. They agree that the court may dismiss Plaintiff's claim invoking the Due Process clause of the Fifth Amendment without prejudice. They further agree that the court need not enter a permanent injunction, and that the Defendants will instead comply with the terms of the stipulation.

The court GRANTS the stipulation and orders as follows.

- 20 1) The court dismisses Plaintiffs' Due Process claim without prejudice.
- 21 2) The parties are bound by the terms of their stipulation, as set forth below.
- 22 3) The clerk shall enter judgment for Plaintiffs, and that judgment shall incorporate the
23 court's March 11 order certifying a class and granting declaratory relief in favor of the
24 class.
- 25 4) The clerk shall TERMINATE this civil action, although the court retains jurisdiction
26 for the purpose of enforcing the terms of the stipulation.

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1 The remainder of this order reproduces the parties' stipulation as they submitted it.
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4 Dated this 9th day of April, 2014.
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9 The Honorable Richard A. Jones
10 United States District Court Judge
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13 STIPULATION

14 Plaintiffs-Petitioners Bassam Yusef Khoury, et al. ("Plaintiffs"), and Defendants-
15 Respondents Nathalie Asher, et al. ("Defendants" and collectively with Plaintiffs, the "Parties"),
16 through counsel, submit the following stipulated statement and order ("Stipulation") pursuant to
17 the Court's March 11, 2014, order (ECF No. 44).

18 I. STIPULATION RELATING TO PLAINTIFFS' DUE PROCESS CLAIM

19 Plaintiffs will take no further steps to pursue to judgment their Due Process claim set forth
20 as the Second Cause of Action in Plaintiffs' First Amended Class Action Complaint and Petition
21 For Writ of Habeas Corpus, ECF No. 19 ("Due Process Claim"). Plaintiffs stipulate to voluntarily
22 dismiss without prejudice their Due Process Claim.

23 II. DEFINITIONS RELATING TO RELIEF

24 In addition to the capitalized terms defined above, the following terms shall have the
25 following meanings in this Stipulation:

26 1. "Order" means the order of the Court entered in this action on March 11, 2014,
27 ECF No. 44.

28 2. "ICE" means U.S. Immigration and Customs Enforcement.

3. "Current Class Detainee" means any individual/detainee deemed by ICE to be an
4 'alien' currently in immigration detention whom ICE has been detaining in the Western District of
5 Washington pursuant to 8 U.S.C. § 1226(c) prior to March 11, 2014, but who was not taken into
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1 immigration custody immediately upon his or her release from criminal custody for an offense
2 referenced in 8 U.S.C. § 1226(c)(1).¹

3 4. “New Class Detainee” means any individual/detainee deemed by ICE to be an
4 ‘alien’ whom ICE has taken or takes into immigration custody in the Western District of
5 Washington on or after March 11, 2014, but who was not taken into immigration custody
6 immediately upon his or her release from criminal custody for an offense referenced in 8 U.S.C. §
7 1226(c)(1).

8 5. “Form I-286” means Department of Homeland Security Form I-286, attached
9 hereto as Exhibit A.

10 6. “EOIR” means the United States Department of Justice Executive Office for
11 Immigration Review.

12 7. “Custody Redetermination” means an individualized review of ICE’s custody
13 determination for Current Class Detainees and New Class Detainees conducted by an immigration
14 judge pursuant to 8 U.S.C. § 1226(a), 8 C.F.R. § 1003.19, and 8 C.F.R. § 1236.1(d)(1).

15 **III. STIPULATIONS RELATING TO RELIEF**

16 The Parties stipulate that injunctive relief is unnecessary to afford complete relief to the
17 class in light of Defendants’ following response to the Order, which Defendants stipulate to
18 maintain for so long as the Order remains valid and enforceable:

19 1. ICE will detain all New Class Detainees subject to 8 U.S.C. § 1226(a), rather than
20 to 8 U.S.C. § 1226(c).

21 2. As of March 26, 2014, ICE has identified all Current Class Detainees, provided
22 Current Class Detainees with a custody determination pursuant to 8 U.S.C. § 1226(a) and 8 C.F.R.

23 ¹ Plaintiffs note that they object to use of the term “alien” unless citing to the statute or case law.
24 As the Sixth Circuit recently stated, “[w]e recognize that using the term ‘alien’ to refer to other
25 human beings is offensive and demeaning. We do not condone the use of the term and urge
26 Congress to eliminate it from the U.S. Code. We use it here, however, to be consistent with the
27 statutory language and to avoid any confusion in replacing a legal term of art with a more
28 appropriate term.” *Flores v. U.S. Citizenship and Immigration Services*, 718 F.3d 548, 551 n.1
(6th Cir. 2013). Pointedly, the majority opinion of the Supreme Court’s most recent decision
analyzing the Immigration and Nationality Act replaced any reference to “alien” with
“noncitizen.” *Moncrieffe v. Holder*, 133 S.Ct. 1678 (2013).

1 § 1236.1(c)(8), and provided Current Class Detainees with notice of ICE's custody determination
2 on Form I-286.

3 3. By May 2, 2014, EOIR will commence Custody Redeterminations for all Current
4 Class Detainees who request them pursuant to 8 C.F.R. § 1003.19(b) on or before April 2, 2014.

5 4. EOIR will provide Custody Redeterminations for all other Current Class Detainees
6 and for all New Class Detainees pursuant to 8 U.S.C. § 1226(a), 8 C.F.R. § 1003.19 and 8 C.F.R.
7 § 1236.1(d)(1).

8 5. By June 2, 2014, undersigned counsel for Defendants will file and serve a
9 certification that Current Class Detainees have been processed and treated as detainees subject to 8
10 U.S.C. § 1226(a) and that those who requested Custody Redeterminations pursuant to 8 C.F.R.
11 § 1003.19(b) on or before April 2, 2014, had their Custody Redeterminations commenced, with all
12 procedural protections allowable by law, by May 2, 2014.

13 6. By June 2, 2014, Defendants will provide class counsel with a list of (i) Current
14 Class Detainees, including full name, and A number; (ii) the date they were detained by
15 Defendants; (iii) information about Custody Redetermination hearings, including whether or not
16 one was conducted, and the date of hearing; and (iv) the result of any Custody Redetermination,
17 including specifying release on own recognizance and the amount of bond set by an immigration
18 judge.

19 7. By June 2, 2014, Defendants will provide class counsel with copies of all I-286 forms
20 provided to each Current Class Detainee.

21 Dated: April 2, 2014

22 NORTHWEST IMMIGRANT
23 RIGHTS PROJECT

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Respectfully submitted,

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